

The ILND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (See instructions on next page of this form.)

I. (a) PLAINTIFFS

Backgrid USA Inc.

(b) County of Residence of First Listed Plaintiff Los Angeles County, California
(Except in U.S. plaintiff cases)

(c) Attorneys (firm name, address, and telephone number)

Charles Wentworth, The Law Office of Lofgren & Wentworth, P.C.
536 Crescent Blvd. Suite 200, Glen Ellyn, IL 60137
(630) 469-7100

DEFENDANTSModern Notoriety Inc.
Oscar Castillo

County of Residence of First Listed Defendant Cook County, Illinois (both)
(In U.S. plaintiff cases only)

Note: In land condemnation cases, use the location of the tract of land involved.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Check one box, only.)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question
(U.S. Government not a party.)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate citizenship of parties in Item III.)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only.)
(Check one box, only for plaintiff and one box for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Check one box, only.)

CONTRACT	TORTS	PRISONER PETITIONS	LABOR	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 530 General <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Habeas Corpus: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act PROPERTY RIGHTS <input checked="" type="checkbox"/> 820 Copyright <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 (DTSA)	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729 (a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act (TCPA) <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Arts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 120 Marine					
<input type="checkbox"/> 130 Miller Act					
<input type="checkbox"/> 140 Negotiable Instrument					
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment					
<input type="checkbox"/> 151 Medicare Act					
<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excludes Veterans)					
<input type="checkbox"/> 153 Recovery of Veteran's Benefits					
<input type="checkbox"/> 160 Stockholders' Suits					
<input type="checkbox"/> 190 Other Contract					
<input type="checkbox"/> 195 Contract Product Liability					
<input type="checkbox"/> 196 Franchise					
REAL PROPERTY	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/ Disabilities-Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee (Prisoner Petition) <input type="checkbox"/> 465 Other Immigration Actions	FORFEITURE/PENALTY <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAXES <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Check one box, only.)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

17 USC Sec 501

VII. PREVIOUS BANKRUPTCY MATTERS (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.)**VIII. REQUESTED IN COMPLAINT:**

☐ Check if this is a class action under Rule 23, F.R.Cv.P.

Demand \$ 1,050,000

CHECK Yes only if demanded in complaint:

Jury Demand: ☒ Yes ☐ No**IX. RELATED CASE(S) IF ANY** (See instructions):

Judge

Case Number

X. Is this a previously dismissed or remanded case?☒ Yes ☐ No If yes, Case #

Name of Judge California Dist Court (see attached)

Date: November 5, 2021

Signature of Attorney of Record /s/ Charles G. Wentworth

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
10

11
12 BACKGRID USA, INC., a
13 California corporation,
14 Plaintiff,

15 v.

16 MODERN NOTORIETY INC., an
17 Illinois corporation;
18 OSCAR CASTILLO, an
19 individual; and DOES 1-10,
20 inclusive,
Defendants.

CV 21-03318-RSWL- (PDx)

**ORDER re: Defendant Oscar
Castillo's Motion to
Dismiss [17]**

21 Plaintiff BackGrid USA, Inc. ("Plaintiff") brings
22 this action for copyright infringement against
23 Defendants Modern Notoriety Inc. ("Corporate Defendant")
24 and Oscar Castillo ("Defendant Castillo") (collectively,
25 "Defendants"). Before the Court is Defendant Castillo's
26 Motion for Dismissal Under Rule 12(b)(1) Due to Lack of
27 Personal Jurisdiction and Improper Venue Under FRCP
28 12(b)(2) and 12(b)(3) (the "Motion") [17].

1 Having reviewed all papers submitted pertaining to
 2 the Motion, the Court **NOW FINDS AND RULES AS FOLLOWS:**
 3 the Court **GRANTS** Defendant Castillo's Motion for
 4 improper venue under Rule 12(b)(3) and **DENIES as moot**
 5 Defendant Castillo's remaining grounds for dismissal.

6 I. BACKGROUND

7 A. Factual Background

8 The following allegations are taken from
 9 Plaintiff's Complaint.

10 Plaintiff is a California corporation with its
 11 principal place of business in Redondo Beach,
 12 California. Compl. ¶ 3, ECF No. 1. Plaintiff owns and
 13 operates one of Hollywood's largest celebrity photograph
 14 agencies. Id. ¶ 7. Plaintiff owns the intellectual
 15 property rights to celebrity photographs that have been
 16 licensed to prominent media outlets throughout the
 17 world. Id.

18 Corporate Defendant is an Illinois corporation with
 19 its principal place of business in Chicago, Illinois.
 20 Id. ¶ 4. Defendant Castillo, an individual residing in
 21 Chicago, is the founder and editor-in-chief of Corporate
 22 Defendant. Id. ¶ 5. Corporate Defendant owns,
 23 operates, and controls modern-notoriety.com (the
 24 "Website"), which is dedicated to athletic shoes. Id.
 25 ¶ 10. It also features an online shop that sells Modern
 26 Notoriety-branded streetwear. Id. To promote its
 27 website and shop, Corporate Defendant operates and
 28 controls an Instagram account that links back to the

1 website and drives traffic to the website's banner
2 advertisements and online shop that generate revenue to
3 Defendants. Id.

4 Plaintiff alleges that Defendants infringed
5 Plaintiff's copyrights to seven of Plaintiff's
6 photographs (the "Subject Photographs") by posting them
7 on Corporate Defendant's Website and social media
8 account without Plaintiff's permission. Id. ¶¶ 11, 19.
9 Defendant Castillo is credited as the author of the
10 allegedly infringing posts. Id. ¶ 11. Plaintiff
11 further alleges that Defendants encourage their fans to
12 "share" the photographs by uploading the Subject
13 Photographs to their account. Id. ¶ 12.

14 **B. Procedural Background**

15 Plaintiff filed its Complaint [1] against
16 Defendants on April 16, 2021, alleging copyright
17 infringement in violation of 17 U.S.C. § 501.

18 On May 19, 2021, Defendants filed the present
19 Motion [17]. The Court struck [18] the Motion as to
20 Corporate Defendant on June 4, 2021, on the grounds that
21 Corporate Defendant cannot appear *pro se*. Plaintiff
22 filed its Opposition [19] on June 15, 2021. Defendant
23 Castillo filed his Reply [21] on June 22, 2021.

24 **II. LEGAL STANDARD**

25 **A. Personal Jurisdiction**

26 Federal Rule of Civil Procedure ("Rule") 12(b)(2)
27 provides a basis for moving to dismiss a claim for lack
28 of personal jurisdiction. Fed. R. Civ. P. 12(b)(2).

1 Once personal jurisdiction is challenged, the plaintiff
2 bears the burden of demonstrating that jurisdiction is
3 appropriate. See, e.g., Boschetto v. Hansing, 539 F.3d
4 1011, 1015 (9th Cir. 2008); Pebble Beach Co. v. Caddy,
5 453 F.3d 1151, 1154 (9th Cir. 2006). Where the motion
6 is "based on written materials rather than an
7 evidentiary hearing, the plaintiff need only make a
8 prima facie showing of jurisdictional facts" to survive
9 dismissal. Mavrix Photo, Inc. v. Brand Techs., Inc.,
10 647 F.3d 1218, 1223 (9th Cir. 2011).

11 "The plaintiff cannot 'simply rest on the bare
12 allegations of [the] complaint,' but uncontroverted
13 allegations in the complaint must be taken as true."
14 Id. (quoting Schwarzenegger v. Fred Martin Motor Co.,
15 374 F.3d 797, 800 (9th Cir. 2004)). If, however, the
16 defendant presents evidence contradicting the
17 allegations in the complaint, the plaintiff must "come
18 forward with facts, by affidavit or otherwise,
19 supporting personal jurisdiction." Barantsevich v. VTB
20 Bank, 954 F. Supp. 2d 972, 982 (C.D. Cal. 2013) (quoting
21 Scott v. Breeland, 792 F.2d 925, 927 (9th Cir. 1986)).
22 "[D]isputed allegations in the complaint that are not
23 supported with evidence or affidavits cannot establish
24 jurisdiction[.]" AMA Multimedia, LLC v. Wanat, 970 F.3d
25 1201, 1207 (9th Cir. 2020). Although the court "may not
26 assume the truth of allegations in a pleading which are
27 contradicted by affidavit," factual disputes must be
28 resolved in the plaintiff's favor. Mavrix Photo, 647

1 F.3d at 1223 (citations omitted).

2 "Personal jurisdiction over [a nonresident]
3 defendant is proper where permitted by a long-arm
4 statute and where the exercise of jurisdiction does not
5 violate federal due process." AMA Multimedia, 970 F.3d
6 at 1207 (citing Pebble Beach, 453 F.3d at 1154). Where
7 no applicable federal statute governs personal
8 jurisdiction, "the district court applies the law of the
9 state in which the court sits." Mavrix Photo, 647 F.3d
10 at 1223. "Because 'California's long-arm statute allows
11 the exercise of personal jurisdiction to the full extent
12 permissible under the U.S. Constitution,' our inquiry
13 centers on whether exercising jurisdiction comports with
14 due process." Picot v. Weston, 780 F.3d 1206, 1211 (9th
15 Cir. 2015) (quoting Daimler AG v. Bauman, 571 U.S. 117,
16 125 (2014)); see Cal. Code Civ. Proc. § 410.10.

17 Constitutional due process requires that a
18 nonresident defendant have "certain minimum contacts
19 with [the forum state] such that the maintenance of the
20 suit does not offend 'traditional notions of fair play
21 and substantial justice.'" Goodyear Dunlop Tires
22 Operations, S.A. v. Brown, 564 U.S. 915, 923 (2011)
23 (quoting Int'l Shoe Co. v. Washington, 326 U.S. 310, 316
24 (1945)). Depending on the nature and extent of the
25 defendant's contacts with the forum state, a court may
26 exercise either general or specific jurisdiction.
27 Bristol-Myers Squibb Co. v. Super. Ct. of Cal., 137 S.
28 Ct. 1773, 1780 (2017). General jurisdiction exists when

1 the defendant's contacts "are so continuous and
2 systematic as to render [it] essentially at home in the
3 forum State." Daimler, 571 U.S. at 139 (internal
4 quotation marks and citation omitted). By contrast,
5 specific jurisdiction exists when the suit "aris[es] out
6 of or relate[s] to the defendant's contacts with the
7 forum." Id. at 127 (citations omitted).

8 **B. Improper Venue**

9 Under Rule 12(b)(3), a defendant may move to
10 dismiss on the basis of improper venue. Fed. R. Civ. P.
11 12(b)(3). Once a defendant raises an objection to
12 venue, the plaintiff bears the burden of establishing
13 that venue is proper. See Piedmont Label Co. v. Sun
14 Garden Packing Co., 598 F.2d 491, 496 (9th Cir. 1979).
15 In the context of a Rule 12(b)(3) motion, the court need
16 not accept the allegations in the complaint as true and
17 may consider facts outside the pleadings. See Murphy v.
18 Schneider Nat'l, Inc., 362 F.3d 1133, 1137 (9th Cir.
19 2004). If the court determines that venue is improper,
20 the court must either dismiss the action or, if it is in
21 "the interest of justice," transfer it "to any district
22 or division in which it could have been brought." 28
23 U.S.C. § 1406(a). Whether to dismiss an action for
24 improper venue, or alternatively to transfer venue to a
25 proper court, is entirely within the discretion of the
26 district court. See King v. Russell, 963 F.2d 1301,
27 1304 (9th Cir. 1992).

28 ///

III. DISCUSSION

Defendant Castillo moves to dismiss on three grounds: (1) he is not subject to personal jurisdiction in California; (2) venue is improper; and (3) his use of the Subject Photographs is de minimis or constitutes fair use. See generally Mot. & Castillo Decl. 1, ECF No. 17. Because the Court concludes that venue is improper in the Central District of California, it does not reach Defendant Castillo's other arguments.

For copyright actions, venue is proper "in the district in which the defendant or his agent resides or may be found." 28 U.S.C. § 1400(a). The Ninth Circuit "interprets this provision to allow venue in any judicial district where, if treated as a separate state, the defendant would be subject to personal jurisdiction." Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1126 (9th Cir. 2010) (citation omitted). The Court thus considers whether Defendant Castillo would be subject to personal jurisdiction in this district to determine whether venue is proper.

A. General Jurisdiction

"The standard for general jurisdiction 'is an exacting standard, as it should be, because a finding of general jurisdiction permits a defendant to be haled into court in the forum state to answer for any of its activities anywhere in the world.'" Mavrix Photo, 647 F.3d at 1224 (quoting Schwarzenegger, 374 F.3d at 801). A plaintiff must show that a nonresident defendant's

1 contacts are "so continuous and systematic as to render
2 [it] essentially at home in the forum State." Daimler,
3 571 U.S. at 139 (internal quotation marks and citations
4 omitted). "For an individual, the paradigm forum for
5 the exercise of general jurisdiction is the individual's
6 domicile" Id. at 137 (quoting Goodyear, 564
7 U.S. at 924).

8 There is no dispute that Defendant Castillo resides
9 in Chicago, Illinois. See Compl. ¶ 5; Mot. & Castillo
10 Decl. 1. Plaintiff argues that Defendant Castillo is
11 amenable to general jurisdiction because the Website
12 contains advertisements directed to Southern California
13 residents and Defendant Castillo uses the Website to
14 solicit Southern California customers and users. See
15 Opp'n 7:11-8:6, ECF No. 19.

16 These contacts are insufficient to establish
17 general jurisdiction over Defendant Castillo. Although
18 third parties use Defendant Castillo's Website to
19 advertise Southern California law firms, health care
20 services, and other businesses, see Ardalan Decl. Ex. A,
21 ECF No. 19-2, Defendant Castillo "does not 'solicit[] .
22 . . business in the state' by carrying those
23 advertisements." Mavrix Photo, 647 F.3d at 1225
24 (quoting Bancroft & Masters, Inc. v. Augusta Nat'l Inc.,
25 223 F.3d 1082, 1086 (9th Cir. 2000), overruled in part
26 on other grounds by Yahoo! Inc. v. La Ligue Contre Le
27 Racisme Et L'Antisemitisme, 433 F.3d 1199, 1207 (9th
28 Cir. 2006) (en banc)). Rather, Defendant Castillo

1 allows those third parties to solicit business by taking
2 advantage of his existing user base. See id. "Evidence
3 that a nonresident defendant advertises in a forum is
4 significant for general jurisdiction when the defendant
5 markets its own product by targeting forum residents, .
6 . . but has less significance for general jurisdiction
7 when other entities use the defendant's publication to
8 promote their own businesses." Id. at 1225-26 (internal
9 citations omitted).

10 That Defendant Castillo's Website and social media
11 accounts have Southern California customers and
12 "followers" is likewise insufficient. See Opp'n 7:11-
13 8:6; Ardalan Decl. Ex. B, ECF No. 19-3; Compl. ¶ 2.
14 "[O]ccasional sales to forum residents by a nonresident
15 defendant do not suffice to establish general
16 jurisdiction." Mavrix Photo, 647 F.3d at 1226 (internal
17 quotation marks and citations omitted); see Ranza v.
18 Nike, Inc., 793 F.3d 1059, 1070 (9th Cir. 2015) ("[T]he
19 general jurisdiction inquiry examines a [nonresident
20 defendant]'s activities worldwide—not just the extent of
21 its contacts in the forum state—to determine where it
22 can be rightly considered at home." (citing Daimler, 571
23 U.S. at 139 n.20)). In addition, the fact that
24 Defendant Castillo's universally accessible social media
25 account has some "followers" in the Southern California
26 area is merely fortuitous and does not support general
27 jurisdiction. See Sussman v. Playa Grande Resort, S.A.
28 de C.V., 839 F. App'x 166, 168 (9th Cir. 2021) ("[The

defendant]'s website is accessible to people all over the world and does not establish general jurisdiction in California simply because California residents can access it." (citing Schwarzenegger, 374 F.3d at 801)). Contrary to Plaintiff's position, it is not enough that a nonresident defendant "engage in 'continuous and systematic general business contacts' within the forum state." Opp'n 7:7-19. Instead, the nonresident defendants' contacts must be "so 'continuous and systematic' as to render [him] essentially at home" in the forum. Daimler, 571 U.S. at 139 (quoting Goodyear, 564 U.S. at 919).

Defendant Castillo has virtually no contacts with California or this district. See Mot. & Castillo Decl. ¶¶ 1-10. Defendant Castillo has no paid employees, agents, or representatives in California. Id. ¶ 2. Nor does he have financial accounts, business activity, leases, phones, property, or other presence in California. Id. ¶ 8. Defendant Castillo has never been to California in connection with the Website or business, only having visited for occasional vacation travel. Id. ¶ 9. Accordingly, the Court concludes that the exercise of general jurisdiction over Defendant Castillo would not be appropriate in this forum.

B. Specific Jurisdiction

"The inquiry whether a forum State may assert specific jurisdiction over a nonresident defendant focuses on the relationship among the defendant, the

forum, and the litigation.” Walden v. Fiore, 571 U.S. 277, 283–84 (2014) (internal quotation marks and citations omitted). For the assertion of specific jurisdiction to comport with due process, “the defendant’s suit-related conduct must create a substantial connection with the forum State.” Id. at 284. The Ninth Circuit has established three requirements for a court to assert specific jurisdiction over a nonresident defendant:

(1) the defendant must either “purposefully direct his activities” toward the forum or “purposefully avail[] himself of the privileges of conducting activities in the forum”; (2) “the claim must be one which arises out of or relates to the defendant’s forum-related activities”; and (3) “the exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be reasonable.”

Axiom Foods, Inc. v. Acerchem Int’l, Inc., 874 F.3d 1064, 1068 (9th Cir. 2017) (quoting Dole Foods Co., Inc. v. Watts, 303 F.3d 1104, 1111 (9th Cir. 2002)). The plaintiff bears the burden of establishing the first two prongs of the test. Id. “If the plaintiff meets that burden, ‘the burden then shifts to the defendant to “present a compelling case” that the exercise of jurisdiction would not be reasonable.’” Id. at 1068–69 (quoting Schwarzenegger, 374 F.3d at 802).

1. Purposeful Direction

Because this action involves copyright infringement, which sounds in tort, the purposeful direction analysis applies here. See Mavrix Photo, 647

1 F.3d at 1228. Purposeful direction is analyzed under
2 the "effects" test drawn from Calder v. Jones, 465 U.S.
3 783 (1984). See Axiom Foods, 874 F.3d at 1069. Under
4 this test, Plaintiff must show that Defendant Castillo
5 "(1) committed an intentional act, (2) expressly aimed
6 at the forum state, (3) causing harm that the defendant
7 knows is likely to be suffered in the forum state." Id.
8 (citation omitted). All three requirements must be met
9 for specific jurisdiction to attach. See Picot, 780
10 F.3d at 1215 n.4.

11 a. *Intentional Act*

12 A defendant commits an intentional act "when he
13 acts with 'an intent to perform an actual, physical act
14 in the real world, rather than an intent to accomplish a
15 result or consequence of that act.'" AMA Multimedia,
16 970 F.3d at 1209 (quoting Schwarzenegger, 374 F.3d at
17 806). Here, Plaintiff alleges that Defendant Castillo
18 created copies of the Subject Photographs and published
19 them on his Website and social media accounts. Compl.
20 ¶ 11; Opp'n 3:15-22. Defendant Castillo does not
21 dispute that he engaged in these acts but contends that
22 he obtained the Subject Photographs from other people,
23 not Plaintiff, and properly credited those sources in
24 his reposting. Mot. & Castillo Decl. ¶¶ 11-16. In the
25 context of the effects test, however, Defendant Castillo
26 need not intend to infringe Plaintiff's copyrights to
27 commit an intentional act; it suffices that Defendant
28 Castillo acted intentionally in copying and reposting

1 the Subject Photographs. See Schwarzenegger, 374 F.3d
2 at 806; Mavrix Photo, 647 F.3d at 1229 ("There is no
3 question that [the defendant] acted intentionally
4 reposting the allegedly infringing photos . . .").
5 The first prong is thus satisfied.

6 b. *Expressly Aimed*

7 The second prong of the effects test asks whether
8 Defendant Castillo's acts were "expressly aimed at the
9 forum." Pico, 780 F.3d at 1214. Plaintiff must show
10 that California—and, for the venue inquiry, this
11 district—was a "focal point both of [Defendant
12 Castillo's actions] and of the harm suffered." Axiom
13 Foods, 874 F.3d at 1071 (quoting Walden, 571 U.S. at
14 287). Plaintiff fails to meet its burden here.

15 First, Plaintiff appears to argue that the express
16 aiming prong is met because Defendant Castillo posted
17 the Subject Photographs on interactive websites.
18 Plaintiff describes Defendant Castillo's Twitter and
19 Instagram accounts as "highly interactive" websites that
20 solicit comments and "retweets" by other users. See
21 Opp'n 4:3-5. Plaintiff suggests that the Website is
22 likewise interactive because it solicits California
23 consumers to follow Defendants' social media accounts;
24 California consumers in fact follow those other social
25 media accounts; the Website solicits consumers to
26 comment on it; and, in doing so, consumers provide their
27 name, e-mail address, and website. See id. at 4 n.2.

28 ///

1 However, the websites' alleged level of
2 interactivity alone is insufficient to establish express
3 aiming. See Cybersell, Inc. v. Cybersell, Inc., 130
4 F.3d 414, 419 (9th Cir. 1997) (emphasis added) ("[T]he
5 *likelihood* that personal jurisdiction can be
6 constitutionally exercised is directly proportionate to
7 the nature and quality of commercial activity that an
8 entity conducts over the Internet." (quoting Zippo Mfg.
9 Co. v. Zippo Dot Com, Inc., 952 F. Supp. 1119, 1124
10 (W.D. Pa. 1997))); Wonderful Co. LLC v. Nut Cravings
11 Inc., No. 2:20-CV-11738-SVW-JEM, 2021 WL 3598859, at *3
12 (C.D. Cal. Apr. 22, 2021) ("More recent Ninth Circuit
13 case law makes clear that interactivity, whatever its
14 role, is only one among many factors considered as part
15 of the express aiming test." (citing Mavrix Photo, 647
16 F.3d at 1229)). "For an interactive website to confer
17 personal jurisdiction, a plaintiff must allege
18 'something more.'" ThermoLife Int'l, LLC v.
19 NetNutri.com LLC, 813 F. App'x 316, 318 (9th Cir. 2020).
20 "Operating a universally accessible website alone cannot
21 satisfy the express aiming prong." Spy Optic, Inc. v.
22 AreaTrend, LLC, 843 F. App'x 66, 68 (9th Cir. 2021); see
23 Mavrix Photo, 647 F.3d at 1231 ("Not all material placed
24 on the Internet is, solely by virtue of its universal
25 accessibility, expressly aimed at every state in which
26 it is accessed."). "[A] plaintiff must also show that
27 the website 'directly target[ed] the forum.'" Sky
28 Optic, 843 F. App'x at 68 (quoting AMA Multimedia, 970

1 F.3d at 1210).

2 Plaintiff next contends that Defendant Castillo has
3 done "something more" to target Southern California
4 residents, submitting evidence of advertisements for a
5 Southern California law firm and health care services
6 found on the Website. See Opp'n 4:16-5:13; Ardalan
7 Decl. Ex. A. According to Plaintiff, Defendant Castillo
8 "exploited the personal and private information of
9 Southern California residents for [his] own benefit"
10 because these advertisements solicited Southern
11 California consumers and resulted in revenue for
12 Defendant Castillo. Opp'n 5:8-11.

13 A defendant can be said to have "expressly aimed"
14 at a forum where its website "with national viewership
15 and scope appeals to, and profits from, an audience in
16 [that forum]." Mavrix Photo, 647 F.3d at 1231; see Sky
17 Optic, 843 F. App'x at 68 ("A defendant directly targets
18 a forum when its website 'appeals to, and profits from,
19 an audience in [that] state.'" (quoting Mavrix Photo,
20 647 F.3d at 1231)). While the advertisements may show
21 that Defendant Castillo "profits from" viewers in
22 Southern California, there is no suggestion that the
23 Website "appeals to" a Southern California audience.
24 See AMA Multimedia, 970 F.3d at 1211 n.7. Plaintiff
25 alleges that the Website is "dedicated to athletic
26 shoes, especially new releases from top brands" and
27 features an online shop that sells branded streetwear.
28 Compl. ¶ 10. Nothing indicates that the Website has a

1 Southern California-specific focus or appeals to a
2 significant Southern California audience. See Mavrix,
3 647 F.3d at 1230 (finding the express aiming prong
4 satisfied where the operator of a website with "a
5 specific focus on the California-centered celebrity and
6 entertainment industries" used the plaintiff's
7 copyrighted photos "as part of its exploitation of the
8 California market for its own commercial gain," and the
9 California audience was "an integral component of [the
10 website operator]'s business model and its
11 profitability").

12 In addition, the fact that Defendant Castillo's
13 Website and social media accounts have some Southern
14 California consumers and followers is insufficient to
15 show that Defendant Castillo expressly aimed his
16 intentional acts at the Southern California market. See
17 AMA Multimedia, 970 F.3d at 1211 (holding that a foreign
18 adult film website operator had not expressly aimed
19 content at the U.S. market even though nearly 20% of the
20 website's users were in the United States where the
21 website "lack[ed] a forum-specific focus"); Headspace
22 Int'l, LLC v. New Gen Agric. Servs., LLC, No. CV-16-
23 3917-RGK (GJSx), 2016 WL 9275781, at *4 (C.D. Cal. Nov.
24 15, 2016) (finding contact with California citizens
25 through social media accounts to be insufficient to
26 establish express aiming at California).

27 Moreover, Defendant Castillo avers that he did not
28 choose, control, or display the advertisements found on

1 the Website. Reply & Supporting Decl. 2, ECF No. 21.
2 Rather, the underlying browser or platform selects the
3 advertisements displayed to a user "based upon their
4 tracking of the user's search history, cookies and
5 location." Id. The Supreme Court "made clear that the
6 third-party advertiser's behavior cannot be attributed
7 to the defendant as a contact." AMA Multimedia, 970
8 F.3d at 1211 n.6 (citing Walden, 571 U.S. at 284).
9 Because the targeted advertisements are selected by a
10 third party, their geographic focus cannot support a
11 finding that Defendant Castillo expressly aimed its
12 intentional acts at Southern California. See Walden,
13 571 U.S. at 284 ("We have consistently rejected attempts
14 to satisfy the defendant-focused 'minimum contacts'
15 inquiry by demonstrating contacts between the plaintiff
16 (or third parties) and the forum State."); AMA
17 Multimedia, 970 F.3d at 1211 (stating that geo-located
18 advertisements provided by a third party do not
19 establish that the defendant expressly aimed at the
20 forum, as such advertisements "are always directed at
21 the forum" and the defendant "does not personally
22 control the advertisements shown on the site").

23 Plaintiff also argues that the express aiming
24 requirement is satisfied because Defendant Castillo
25 posted the Subject Photographs on Twitter and Instagram—
26 California companies whose terms and conditions prohibit
27 infringement and are subject to California law. See
28 Opp'n 4:3-7, 5:13-15; Compl. ¶ 2. The Court disagrees.

1 Evidence that Defendant Castillo utilized the services
2 of California-based internet companies to allegedly
3 infringe Plaintiff's copyrights does not establish
4 express aiming at California. See Werner v.
5 Dowlatsingh, 818 F. App'x 671, 673 n.2 (9th Cir. 2020)
6 ("Uploading a video to YouTube—which has its
7 headquarters in San Bruno, California—is not an act
8 expressly aimed at California simply because the company
9 is based in the state."); Brophy v. Almanzar, 359 F.
10 Supp. 3d 917, 925 (C.D. Cal. 2018) (collecting cases).
11 Further, "[Defendant Castillo]'s contracts with third
12 parties about choice of law, jurisdiction, and venue
13 have nothing to do with whether it directed its tortious
14 activities towards an entity not a party to those
15 agreements." Good Job Games Bilism Yazilim Ve Pazarlama
16 A.S. v. SayGames LLC, 458 F. Supp. 3d 1202, 1210-11
17 (N.D. Cal. 2020); accord Voodoo SAS v. SayGames LLC, No.
18 19-CV-07480-BLF, 2020 WL 3791657, at *5 (N.D. Cal. July
19 7, 2020). A choice of law provision stating that
20 California law governs does not establish proper venue
21 here. See Amberger v. Legacy Cap. Corp., No. 16-cv-
22 05622-JSC, 2017 WL 264078, at *3 (N.D. Cal. Jan. 20,
23 2017) ("A forum selection clause determines where the
24 case will be heard, it is separate and distinct from
25 choice of law provisions"). And to the extent
26 that Plaintiff relies on jurisdiction and forum
27 selection clauses in third-party websites' terms and
28 conditions, see Opp'n 8:11-14, such reliance is

1 unavailing. Defendant Castillo's acceptance of a third
2 party's terms and conditions may be sufficient to
3 establish his consent to personal jurisdiction in a
4 dispute between Defendant Castillo and the third party,
5 but it is alone insufficient to confer personal
6 jurisdiction over Defendant Castillo in an action
7 brought by Plaintiff.¹ See Melendez v. Vaiana, No. EDCV
8 16-2516 JGB (SPx), 2017 WL 8183139, at *3 (C.D. Cal.
9 Oct. 19, 2017) (declining to find that the defendants
10 had "automatically consented to the personal
11 jurisdiction of a court included in a website's terms'
12 forum selection clause for third-party disputes related
13 to the site").

14 Finally, Plaintiff alleges that Defendant Castillo
15 has "solicit[ed] and engag[ed] in numerous commercial
16 transactions with California users." Compl. ¶ 2. But
17 "[s]elling products on the internet on a national scale
18 is insufficient to establish personal jurisdiction in
19 any one [forum] without additional evidence of conduct
20 focused on that [forum]." Wonderful Co., 2021 WL
21 3598859, at *2. As discussed above, Plaintiff fails to
22 show Southern California-focused conduct on the part of
23

24 ¹ Even if Defendant Castillo's agreements with third-party
25 entities were applicable to this action, the forum selection
26 clauses contained in those terms and conditions would confer
27 jurisdiction in the Northern District of California. See Ardalan
28 Decl. Exs. C-E, ECF Nos. 19-4 to -6; Opp'n 8:11-14. But, for
purposes of venue in this copyright action, the relevant inquiry
is whether the exercise of personal jurisdiction would be
appropriate in the Central District of California.

1 Defendant Castillo. Moreover, Plaintiff alleges that
2 Defendant Castillo's online shop sells Modern Notoriety-
3 branded streetwear, see Compl. ¶ 10, but Defendant
4 Castillo's uncontroverted declaration states that none
5 of the products shown in the Subject Photographs were
6 ever available for purchase on the Website, see Mot. &
7 Castillo Decl. ¶ 4. Any sales to Southern California
8 residents are thus unconnected to Plaintiff's copyright
9 claim and cannot support a finding of specific
10 jurisdiction. See Walden, 571 U.S. at 284 ("[T]he
11 defendant's *suit-related conduct* must create a
12 substantial connection with the forum State." (emphasis
13 added)); AirWair Int'l Ltd. v. Pull & Bear Espana SA,
14 No. 19-CV-07641-SI, 2020 WL 2113833, at *4 (N.D. Cal.
15 May 4, 2020) (rejecting allegations "as irrelevant to
16 the specific jurisdiction analysis, since those
17 allegations concern the sale of clothing and not the
18 'suit-related conduct' of selling the allegedly
19 infringing shoes").

20 In sum, Plaintiff has not established that
21 Defendant Castillo expressly aimed his intentional acts
22 toward this district. The only asserted contacts
23 between Defendant Castillo and Southern California are
24 too "random, fortuitous, or attenuated" to confer
25 specific jurisdiction over Defendant Castillo. Walden,
26 571 U.S. at 286. Because Plaintiff has not satisfied
27 the second prong of the Ninth Circuit's purposeful
28 direction test, the Court need not address the remaining

1 requirements for specific jurisdiction. See
2 Schwarzenegger, 374 F.3d at 807 n.1 (noting that the
3 court "need not, and do[es] not, reach the third part of
4 the [purposeful direction] test" because the plaintiff
5 failed to establish the express aiming requirement); AMA
6 Multimedia, 970 F.3d at 1212 n.9 ("Because we hold that
7 [the plaintiff] has failed to meet its burden on the
8 first prong of the minimum contacts test regarding
9 purposeful direction, we do not need to reach the second
10 and third prongs."). The Court concludes that Plaintiff
11 has failed to make a prima facie showing that Defendant
12 Castillo is subject to this Court's specific
13 jurisdiction.

14 Accordingly, because Plaintiff has not established
15 that this Court has general or specific jurisdiction
16 over Defendant Castillo within the meaning of the
17 Copyright Act, venue is not proper in this district.
18 Where a court determines that venue is improper, it may
19 either dismiss the action without prejudice or, if it is
20 "in the interest of justice," transfer the action "to
21 any district or division in which it could have been
22 brought." 28 U.S.C. § 1406(a); In re Hall, Bayoutree
23 Assocs., Ltd., 939 F.2d 802, 804 (9th Cir. 1991) ("A
24 determination of improper venue does not go to the
25 merits of the case and therefore must be without
26 prejudice."). Plaintiff does not ask the Court to
27 transfer this action. The Court therefore **GRANTS** the
28 Motion for improper venue and **DISMISSES** the action

1 against Defendant Castillo without prejudice.

2 c. *Jurisdictional Discovery and Leave to Amend*

3 Plaintiff requests that, if the Court grants the
4 Motion, Plaintiff be afforded the opportunity to conduct
5 jurisdictional discovery and amend its Complaint. Opp'n
6 9:27-10:5. Plaintiff does not explain what discovery
7 requests it intends to propound, let alone how discovery
8 would alter the Court's jurisdictional analysis. See
9 Boschetto, 539 F.3d at 1020 (affirming the district
10 court's denial of request for jurisdictional discovery
11 where the request "was based on little more than a hunch
12 that [discovery] might yield jurisdictionally relevant
13 facts"); Barantsevich, 954 F. Supp. 2d at 996
14 ("Jurisdictional discovery need not be allowed . . . if
15 the request amounts merely to a 'fishing expedition.'" (citations omitted)). Because Plaintiff has failed to
16 show more than speculative allegations of attenuated
17 jurisdictional contacts "in the face of specific
18 denials" made by Defendant Castillo, "the Court need not
19 permit even limited discovery." Terracom v. Valley
20 Nat'l Bank, 49 F.3d 555, 562 (9th Cir. 1995). The Court
21 therefore **DENIES** Plaintiff's request for jurisdictional
22 discovery.
23

24 Plaintiff has not suggested that it could amend its
25 Complaint to allege additional jurisdictional facts
26 absent jurisdictional discovery, which, as discussed
27 above, is unwarranted. Accordingly, the Court **DENIES**
28 leave to amend.

1 **IV. CONCLUSION**

2 Based on the foregoing, the Court **GRANTS** Defendant
3 Castillo's Motion for improper venue pursuant to Rule
4 12(b)(3) and **DENIES as moot** Defendant Castillo's
5 remaining grounds for dismissal. Defendant Castillo is
6 **DISMISSED** from this action without prejudice.

7 **IT IS SO ORDERED.**

8
9 DATED: September 15, 2021

/s/ Ronald S.W. Lew

10 **HONORABLE RONALD S.W. LEW**
11 Senior U.S. District Judge
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28